IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO.139 OF 2004

Sejal Nilesh Chheda & Ors. .. Petitioners
Vs.
Sheth Damjibhai Laxmichand Dharma
Sthanak Trust & Ors. .. Respondents
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Shri Jayesh Bhatt for the petitioners.

Shri Raju Moray with Shri Vishwanath Talkute for the respondent Nos.1 to 4 and 6 to 9.
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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 21st December, 2004.

P.C.

1. Heard. The petitioners' grievance is that inspite of the specific order dated 19th December, 2001 passed by the Joint Charity Commissioner, Mumbai, requiring the flats to be sold to the petitioners in terms of the said order and the said order having been further clarified in the order dated 9th December, 2003 by the Joint Charity Commissioner, Mumbai, the respondents herein in violation of the said order are seeking to dispose of the said flats to the strangers by issuing public notice inviting the offers for purchase of the said flats. The fact that there was

the order dated 19th December, 2001 requiring the sale of the flats to the petitioners as well as the fact that the said order was clarified on 9th December, 2003 and the fact that there is a public notice issued inviting the offers for purchase of the said flats are not in dispute. However, the records clearly disclose that in terms of the order dated 19th December, 2001, the petitioners were required to pay the entire consideration price within three months from the date of the said order i.e. 19th December, 2001. Referring to the paragraph (3) of the operative part of the order dated 19th December, 2001 which required that the parties to be informed about the said order, and to the fact that the petitioners were not parties to the proceedings, it was sought to be contended that the petitioners were not informed about the said order and that therefore they had no occasion to deposit the said amount within three months from the date of the said order and that therefore, after having learnt about the said order in the month of April, 2002, the petitioners through their advocate requested the respondents to seek for extension of time to pay the amount as the period of three months from the date of the order dated 19th December, 2001 had already been expired. Inspite of the repeated requests, in the month of January, 2004, the respondents without making

any such request or attempt to get the said period extended have tried to sell the said flats to the strangers thereby violated the order of the Charity Commissioner dated 19th December, 2001. It is also sought to be contended that the petitioners being not the parties to the proceedings at the time of passing of the order dated 19th December, 2001, they themselves cannot move for extension of the period and it was necessary for the respondents to do the needful in the matter.

2. The records apparently disclose that when the respondents sought to get the order dated 19th December, 2001 modified, it was objected by the petitioners, and after hearing the petitioners, the order dated 9th December, 2003 was passed wherein there was clear reference to the conditions on which the order dated 19th December, 2001 was passed. Yet, there was no attempt on the part of the petitioners to seek extension of the period of three months which was fixed under the clause (i) of the order dated 19th December, 2001. Even assuming that the fact that the petitioners could not have independently approached for extension of the period fixed under the order dated 19th December, 2001 is accepted, as sought to be argued on behalf of the petitioners, nothing prevented

the petitioners from raising the said fact while disposing of the application filed by the respondents for modification of the order dated 19th December, 2001 and before passing of the order dated 9th December, 2003. There is no explanation as to what prevented the petitioners from doing so.

3. It is also a matter of record that before passing of the order dated 9th December, 2003, the petitioners were heard in the matter. Being so, the contention of the petitioners that prior to the passing of the order dated 9th December, 2003, they cannot approach the Charity Commissioner for seeking extension of the period which was fixed under the order dated 19th December, 2001, cannot be accepted. Once the petitioners themselves contend that they are entitled to get the order dated 19th December, 2001 extended in terms of paragraph (3) of the operative part of the said order, it is obvious that in case there are some benefits assured under the said order and the same cannot be enjoyed on account of lapse of the time, certainly nothing would have prevented the petitioners from approaching the Court in order to seek extension of the period to enjoy such benefits. While the petitioners all the time were busy in filing the applications including the contempt petition for

not complying with the order dated 19th December, 2001, no efforts were made by the petitioners to pay or deposit the amount in terms of the clause (i) of the order dated 19th December, 2001 at any point of time till this date. Mere request to the respondents to seek extension through the advocates for the petitioners cannot absolve the petitioners from their responsibility to comply with the conditions imposed under the order dated 19th December, 2001. There is nothing on record to disclose that the efforts were made by the petitioners to get the period extended or to pay the amount to the respondents or trust in terms of the clause (i) of the order dated 19th December, 2001. It is also to be noted that the petitioners approached this Court with the Contempt Petition No.212 of 2003 which came to be dismissed on 23rd June, 2003 wherein it was specifically observed thus:

> "The learned Advocate appearing for the respondent no.1 trust states that the petitioners were supposed to pay 90% of the purchase price for the flats by Demand Draft within three months but the said amount did not come forward and only 10% of the purchase price was paid."

Inspite of the above observations which were passed on 23rd June, 2003, and thereafter the application regarding modification of the order dated 19th December, 2001 was disposed of by the Charity Commissioner after hearing the parties, no efforts seem to have been made by the petitioners either to pay the amount or to seek extension of the period for payment of rent. Obviously, it is the petitioners themselves who were to be blamed for non-compliance of the order dated 19th December, 2001. Hence, there is absolutely no case made out for proceeding against the respondents for contempt of Court on the ground of violation of the said order dated 19th December, 2001. Inspite of the contempt petition having been rejected with the specific direction regarding non-compliance of the order dated 19th December, 2001 by the petitioners themselves, the petitioners having ventured to approach this Court with the second contempt petition, the same deserves to be dismissed with costs, as it is apparently an abuse of process of Court on the part of the petitioners.

4. In the result, therefore, the contempt petition is dismissed with costs of Rs.2,000/-. The costs shall be deposited by the petitioners in the Registry of this Court within a period of three weeks

from today, and on deposit thereof, the Registry shall credit the same to the account of Maharashtra State Legal Services Authority.

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